

STATE OF TEXAS

§

DEVELOPMENT AGREEMENT

COUNTY OF HIDALGO

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This DEVELOPMENT AGREEMENT (hereinafter the "Agreement") is made as of the last date set forth below by and between **THE ECONOMIC DEVELOPMENT CORPORATION OF WESLACO** (the "EDC"), a Texas Non-Profit Corporation, and **NOLANA SELF STORAGE, L.L.C. d/b/a MOTEL 6 ("NSS")**, a Texas limited liability company, as follows:

WHEREAS, NSS is a developer of motel/hotel projects and intends to construct a MOTEL 6 – Phoenix Prototype (the "Project") on approximately 2.498 acres of land out of Farm Tract 132, West and Adams Subdivision, Weslaco, Hidalgo County, Texas, located on Interstate 2 West, Weslaco, Hidalgo County, Texas (the "Property");

WHEREAS, the EDC and NSS acknowledge that the construction and operation of the Project will require a substantial capital investment by NSS and is expected to benefit the entire City of Weslaco and its citizens by expanding job opportunities and the tax base of the City of Weslaco and associated taxing entities;

WHEREAS, the EDC and NSS acknowledge that the construction and operation of the Project will also result in additional business opportunities for the growth and expansion of other businesses in the City of Weslaco;

WHEREAS, the EDC is non-profit corporation under the Texas Local Government Code, Chapters 501 - 505, whose primary income is from sales tax collected within the City of Weslaco, and is committed to assist in the retention of existing jobs, the creation of new jobs and the increase in capital investment in the private sector within the City of Weslaco, Hidalgo County, Texas, and its surrounding trade areas;

WHEREAS, the EDC desires to assist with the creation of such job opportunities and the expansion of the tax base of the City of Weslaco in accordance with the *Memorandum of Understanding* between the EDC and the City of Weslaco by, among other things, providing economic development incentives and assistance to NSS in consideration of the creation of such job opportunities and the expansion of the tax base in the City of Weslaco;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by the EDC and NSS as follows:

1. NSS commits to invest not less than THREE MILLION DOLLARS (\$3,000,000.00) in actual cost of the acquisition of the Property and construction of the Project in the City of Weslaco on the following terms and conditions:

(a) complete purchase of the Property and provide the EDC with a copy of the recorded warranty deed related thereto together with a copy of the closing statement related to such purchase on or before December 10, 2013;

(b) commence construction of a sixty-five (65) room motel [Motel 6 – Phoenix Prototype] on the Property, including related parking, landscaping and other requirements of the City of Weslaco in accordance with the plans and specifications to be approved by the City of Weslaco,

with commencement of construction determined by the issuance of a Building Permit by the City of Weslaco and the actual physical commencement of construction activities by NSS's designated general contractor at the job site, as verified by the EDC, on or before December 10, 2013, and complete the Project as determined by the issuance of a Certificate of Occupancy by the City of Weslaco on or before December 1, 2014, which may be temporary or conditional upon initial issuance but with the final to be issued not later than 90 days after issuance of any such temporary or conditional permit (with a copy of all such certificates to be provided to the EDC with ten [10] business days of issuance);

(c) enter into a franchise agreement authorizing NSS to operate the Project as a Motel 6 – Phoenix Prototype at the Property on or before December 1, 2014, with a copy of such agreement to be provided to the EDC with ten [10] days of final execution thereof;

(d) provide the EDC with copies of any inspection reports issued by the City of Weslaco during the construction of the Project within five [5] days of issuance thereof as such inspection reports relate to the benchmarks set forth in Paragraph 2 below;

(e) provide the EDC on or before December 1, 2014, a sworn affidavit and such other supporting documentation as reasonably requested by the EDC verifying that a Certificate of Occupancy has been issued by the City of Weslaco, that such required costs have been expended and that the operation of the Project has commenced at the Property in accordance with Paragraphs 1(a), 1(b), 1(c) and 1(d) above;

(f) permit such person or persons as the EDC may hereafter designate to inspect, audit, examine, review and copy NSS's books and records as the EDC determines to be reasonable and necessary to ascertain the reliability of the information of NSS as represented in such affidavits as required herein; with all such work to be performed during normal business hours and upon reasonable advance written notice to NSS; provided further, that the EDC shall pay for any inspection, audit, examination and review which confirms NSS's compliance with such terms and conditions as submitted on such affidavits; however, if such inspection, audit, examination and review results in the material breach of any such terms and conditions resulting in a Default hereunder, NSS shall pay the reasonable cost of such inspection, audit, examination and review within thirty (30) days from demand by the EDC; and

(g) comply with all other obligations imposed upon NSS as provided in this Agreement.

2. In consideration of NSS entering into this Agreement and complying with the terms set forth in Paragraph 1 above, the EDC agrees to contribute economic development incentives to NSS in the aggregate sum of THREE HUNDRED THOUSAND DOLLARS (\$300,000.00) as follows:

(a) ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00) within ten (10) business days of the EDC's receipt of copies of certifications issued by the City of Weslaco relating to approval of the underground plumbing inspection for the Project and approval of the foundation for the Project and the EDC's verification of completion of the foundation; and

(b) ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00) within ten (10) business days of the EDC's receipt of a copy of the Certificate of Occupancy for the Project

issued by the City of Weslaco and the EDC's verification that the Project has commenced operations; provided however, in any event the EDC shall have no obligation to fund this portion of the incentive until October 15, 2014.

3. All economic development incentive credits under this Agreement must be earned by NSS on or before March 1, 2015. The EDC shall have no obligation to recognize any economic development incentives under this Agreement after such date.

4. The EDC, under the following circumstances, and at its sole discretion, may terminate this Agreement and/or refuse to recognize or disburse any economic development incentives without liability to NSS which circumstances are deemed an act of default under this Agreement (each a "Default"), to-wit:

(a) continued default by NSS of all or any of the obligations imposed upon it under any provisions of this Agreement after notice and opportunity to cure such default as provided in Paragraph 6 below;

(b) appointment of a receiver for NSS of all or any substantial part of its property, and the failure of such receiver to be discharged within ninety (90) days thereafter;

(c) adjudication of NSS as a bankrupt;

(d) filing by NSS of a petition or an answer seeking bankruptcy, receivership, reorganization, or admitting the material allegations of a petition filed against it in any bankruptcy or reorganization proceeding;

(e) failure of NSS to pay all *ad valorem* taxes assessed against any property owned by NSS within the City of Weslaco prior to their delinquency date;

(f) failure of NSS to timely render all property owned by NSS and located within the City of Weslaco to the Hidalgo County Appraisal District in accordance with the requirements of the Texas Property Tax Code;

(g) failure of NSS to file all reports and pay all sales taxes or hotel/motel taxes due as a result of its operation of the Project prior to their delinquency date;

(h) failure of NSS to pay any federal or state employment or unemployment taxes due as a result of its operation of the Project prior to their delinquency date;

(i) failure of NSS to pay any charges due to the City of Weslaco prior to the delinquency date thereof; or

(j) employment of an undocumented worker in as provided in Chapter 2264 of the Texas Government Code.

5. NSS specifically agrees that the EDC shall only be liable to NSS for the actual amount of the economic development incentives described herein and shall not be liable to NSS for any other or consequential damages, direct or indirect, attorney's fees, court costs, or any other amount for any act of default by the EDC under the terms of this Agreement. It is further specifically

agreed that the EDC shall only be required to fund this Agreement solely out of its sales tax revenue currently collected, allocated and budgeted and to be allocated, budgeted and collected for the EDC during the term of this Agreement. Payment by the EDC is strictly limited to those funds so allocated, budgeted and collected solely during the term of this Agreement. The EDC shall use its best efforts to anticipate economic conditions and to budget accordingly. However, it is further understood and agreed that, should the actual total sales tax revenue collected for any one (1) year be less than the total amount of economic development incentives to be paid to all contracting parties with the EDC for that year, then, in that event, all contracting parties shall receive only their pro rata share of the available sales tax revenue to that year, less the EDC's customary and usual costs and expenses as compared to each contracting parties' economic development incentives for that year, and the EDC shall not be liable to NSS for any such deficiency at that time or at any time in the future. Provided, however, that if NSS does not receive the total amount of the economic development incentive contracted for hereunder as and when due, the NSS may terminate this Agreement upon thirty (30) days written notice to the EDC and shall have no further obligation hereunder. In the event of such termination, NSS shall be entitled to retain any and all economic development incentives previously paid by the EDC.

6. The EDC shall give NSS written notice of any Default or other failure to comply with the terms of this Agreement by NSS by certified mail return receipt requested. NSS shall have thirty (30) days after receipt of the notice to cure the Default or comply with this Agreement or if such Default or failure to comply cannot be reasonably cured within such thirty (30) day period to initiate such cure and prosecute it to completion in a reasonable time. If, after written notice and opportunity to cure as provided above, NSS fails to timely cure any such Default or comply with this Agreement, this Agreement shall automatically terminate without further notice from the EDC and all obligations of the EDC to make any further economic development incentive payments to NSS shall cease. If any Default or failure to comply with this Agreement relates to a prior time period for which NSS has received economic development incentives from the EDC, NSS shall reimburse all such funds related to such prior time period to the EDC within thirty (30) days of demand therefore by the EDC. If any such Default or failure to comply with this Agreement occurs after the EDC has funded all economic development incentive payments as provided herein, NSS shall reimburse the EDC for all such incentives advanced within thirty (30) days of written demand therefore by the EDC.

7. NSS shall give the EDC written notice of any act of Default by the EDC by certified mail return receipt requested. The EDC shall have thirty (30) days after receipt of the notice to cure the Default or if such Default cannot be reasonably cured within such thirty (30) day period to initiate such cure and prosecute it to completion in a reasonable time. If the EDC fails to timely and fully cure the act of Default, NSS shall be entitled to pursue its remedies as provided herein.

8. NSS represents and warrants as follows:

- (a) all documentation (financial statements, balance sheets, subdivision drawings, etc.) either previously provided to the EDC or subsequently provided to the EDC pursuant to the terms of this Agreement are or will be true and correct representations of the matters set forth therein in all material respects;
- (b) no officer, director or employee of the EDC or the City of Weslaco has been or will be compensated by or at the direction of NSS in any manner with respect to directly or indirectly in respect to the negotiation and execution of

this Agreement and the payment to NSS of the economic development incentives as provided herein; and

- (c) it does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended; further, that if convicted of a violation under 8 U.S.C. § 1324a(f) as to its knowing employment of an undocumented worker attributable to a time period covered by this Agreement, that it shall repay the amount of the economic development incentives provided under this Agreement plus interest at the rate of ten percent (10%) per annum not later than the 120th day after the date of such conviction.

9. No term or provision of this Agreement or act of the EDC in the performance of this Agreement shall be construed as making the EDC or its officers, directors, agents or employees, the agent, servant, employee or contractor of NSS or shall create a partnership between the EDC and NSS.

10. NSS shall not make any use of the EDC's name for publicity in connection with NSS's business or activities without the prior written consent of the EDC. The EDC may make known its contributions to NSS in whatever public manner it deems appropriate in its sole discretion.

11. All representations, warranties, or covenants of the parties, as well as any rights and benefits of the parties, shall survive the execution hereof, and not be merged therein.

12. The EDC agrees to maintain all records and information provided by NSS confidential unless disclosure of such records and information shall be required by a court order, a lawfully issued subpoena, or to the provisions of the Texas Public Information Act [Chapter 552 of the Texas Government Code] as amended.

13. Time shall be of the essence of this Agreement.

14. In case any one or more of the provisions, clauses, phrases or words contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the other provisions hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. Each party acknowledges that both parties have had the opportunity to be represented by counsel, that the terms of this Agreement were negotiated between the parties and that this Agreement will be construed as having been drafted equally by both parties.

15. If either party shall, without fault of such party, be delayed or prevented from the performance of any act required hereunder (other than the payment of money) by reason of acts of God, strikes, lockouts, labor troubles, war, terrorism, or inability to procure materials and such party gives the other party written notice of such event within ten (10) days after such event, the financial inability of the party excepted, performance of such act shall be excused for the period of delay, and the period for the performance of any such act shall be extended by a period equal to the period of such delay.

16. This Agreement or any of the economic development incentive payable hereunder may NOT be assigned by NSS without the prior written consent of the EDC.

17. This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Hidalgo County, Texas.

18. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and assigns.

19. In the event of a dispute between the EDC and NSS over issues related to this Agreement, the parties agree to submit such disputes to mediation by a mutually agreeable mediator prior to the institution of any suit to resolve the dispute or to enforce the terms of this Agreement.

20. Any signatory to this Agreement who is the prevailing party in any legal proceeding against any other signatory brought under or with relation to this Agreement or transaction, shall be additionally entitled to recover court costs and reasonable attorney's fees from the non-prevailing party, except as specifically otherwise provided herein.

21. This Agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the within subject matter.

22. This Agreement is not effective unless the expenditure of economic development incentives in excess of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) in the aggregate as provided herein are approved by the City Commission of the City of Weslaco in accordance with the requirements of Chapters 501-505 of the Texas Local Government Code and the Bylaws of the EDC on or before November 30, 2013.

EXECUTED the 4th day of December, 2013.

THE ECONOMIC DEVELOPMENT
CORPORATION OF WESLACO

By: 
ROB PETERSON, President

275 S. Kansas, Suite A
Weslaco, TX 78596
Telephone: (956) 969-0838
Facsimile: (956) 969-8611 (Fax)

ATTEST:


ADRIAN FARIAS, Secretary

EXECUTED the 2nd day of December, 2013.

NOLANA SELF STORAGE, L.L.C.

By: 
SUNIL WADHWANI, Member/Manager

109 South Main Street
McAllen, TX 78501

Telephone: (956) 655-4689

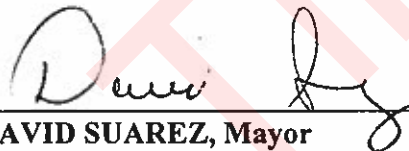
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APPROVAL BY CITY OF WESLACO

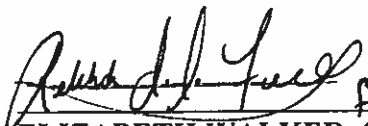
The expenditure by the EDC of economic development incentives in relation to the Project in excess of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) in the aggregate as provided herein was approved on motion duly made, seconded and passed by the City Commission of the City of Weslaco, Texas, at a duly posted meeting with a quorum present in accordance with the laws of the State of Texas.

EXECUTED the _____ day of _____, 2013.

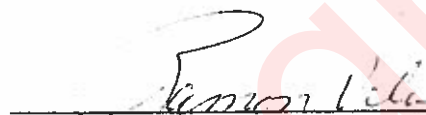
CITY OF WESLACO, TEXAS

By: 
DAVID SUAREZ, Mayor

ATTEST:

 for Elizabeth Walker wcc 6/4/13
ELIZABETH WALKER, City Secretary

APPROVED:


RAMON VELA, City Attorney

GUARANTY

Guarantor[s]: **SUNIL WADHWANI**, 109 S. Main St., McAllen, TX 78501

HARJINDER SINGH, 109 S. Main St., McAllen, TX 78501


To induce EDC to enter into this Agreement and for other consideration, Guarantor agrees that:

1. Guarantor guarantees the performance of NSS's obligations under the Agreement.
2. This is a primary, irrevocable, and unconditional guaranty of payment and performance and not of collection and is independent of NSS's obligations under the Agreement.
3. Guarantor will make all payments to EDC at EDC's address set forth in the Agreement.
4. This guaranty will remain in effect regardless of any modification or extension of the Agreement.
5. Guarantor's obligations will not be diminished by any compromise or release agreed on by the EDC and NSS or by the discharge, limitation, or modification of NSS's obligations in any bankruptcy or other debtor relief proceeding.
6. If there is more than one guarantor, the obligations of each guarantor will be joint and several.
7. Texas law applies to the guaranty.

Guarantor waives its rights:

1. To notices of acceptance, modification, extension, and default and any other notice.
2. To claim any defense arising out of lack of diligence; any failure to pursue NSS; loss or impairment of any right of subrogation or reimbursement; release of any other guarantor or collateral; death, insolvency, or lack of corporate authority of NSS; and waiver, release, or election, based on EDC's or NSS's rights and obligations under the Agreement and the enforcement of its terms.
3. Under chapter 43 of the Texas Civil Practice and Remedies Code.

The prevailing party in any dispute arising out of this guaranty will be entitled to recover reasonable attorney's fees.



SUNIL WADHWANI



HARJINDER SINGH